

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

IN RE: TRAVIS MIDDLETON : APPEAL NO. C-081299
 : TRIAL NO. 08-12094(X)
 : *JUDGMENT ENTRY.*
 :

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

Travis Middleton appeals his delinquency adjudication in the Hamilton County Juvenile Court for the offense of felonious assault with a gun specification. We conclude that his sole assignment of error does not have merit, so we affirm the judgment of the trial court.

The complaint filed against Middleton alleged that Middleton had attempted to cause physical harm by means of a deadly weapon. A later amendment read that Middleton “did knowingly cause or attempt to cause physical harm by means of a deadly weapon.” The complaint also included two gun specifications: that Middleton had a firearm while committing the offense, and that he had displayed, brandished, indicated that he possessed, or used a firearm to facilitate the offense.

At the trial, Mikal Daniels testified that on July 9, 2008, he was leaving a house where candy and cigarettes were sold, and that he was confronted by four males. He recognized Middleton and another person nicknamed “Woogie.” According to Daniels, he saw Woogie hand Middleton a .22-caliber handgun. When

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

Middleton pointed the gun at Daniels, Daniels lunged for the gun. Daniels stated that Middleton then hit him above his eye with the gun. The two wrestled for the gun. According to Daniels, the gun fell on the street. Middleton grabbed the gun, and Daniels ran down the street. As he ran, Daniels heard a gunshot.

Daniels's brother Rashid also testified that he had seen the struggle for the gun. According to Rashid, the gun had fallen to the street, and Daniels had run away. Rashid testified that Middleton had shot the gun toward the ground as Daniels ran away. Later, as Daniels and Rashid ran toward their home, they heard a second gunshot.

Daniels's mother called the Cincinnati Police. Officer Al Brown responded to the Daniels' house. He testified that Daniels had a large gash above his eye. Daniels was able to identify Middleton as "Travis," but he did not know his last name. Brown matched the description given by Daniels to school records to identify Travis Middleton as a potential suspect. When presented with a photographic array that included Middleton's picture, Daniels identified Middleton as the person who had hit him with the gun.

Middleton testified at trial. He stated that Daniels had made the first move and had attacked him. According to Middleton, he had hit Daniels in the mouth to defend himself. Middleton denied that he had had a gun.

At the conclusion of the trial, the magistrate adjudicated Middleton delinquent. Middleton objected to the magistrate's decision, and a hearing was held before the trial court. At the conclusion of the hearing, the trial court entered a judgment that overruled Middleton's objection and committed Middleton to the custody of the Ohio Department of Youth Services.

In his sole assignment of error, Middleton asserts that the adjudication was against the manifest weight of the evidence. When reviewing whether a judgment is

against the manifest weight of the evidence, we must determine whether the trier of fact clearly lost its way and created a manifest miscarriage of justice.²

Middleton contends that the testimony of Daniels and Rashid was incredible. He points to instances in which Daniels's trial testimony conflicted with his testimony during the bindover hearing. Middleton further argues that there was no physical evidence to support the testimony that he had had a gun. We have thoroughly reviewed the record and are unable to conclude that the trial court lost its way when it adjudicated Middleton delinquent. The trier of fact was in the best position to determine the witnesses' credibility. The sole assignment of error is overruled, and we therefore affirm the judgment of the trial court.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HENDON, P.J., SUNDERMANN and CUNNINGHAM, JJ.

To the Clerk:

Enter upon the Journal of the Court on October 28, 2009

per order of the Court _____.
Presiding Judge

² See *State v. Thompson*, 78 Ohio St.3d 380, 387, 1997-Ohio-52, 678 N.E.2d 541.